

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2298

Introduced by Assembly Member Weber

February 18, 2016

~~An act to relating to shared gang databases.~~ *An act to amend Section 13956 of the Government Code, and to amend Section 186.34 of, and to add Section 186.35 to, the Penal Code, relating to criminal gangs.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2298, as amended, Weber. ~~Shared gang databases.~~ *Criminal gangs.*

Existing law generally provides for the compensation of victims and derivative victims of specified types of crimes by the California Victim Compensation and Government Claims Board from the Restitution Fund, a continuously appropriated fund, for specified losses suffered as a result of those crimes. Existing law sets forth eligibility requirements and limits on the amount of compensation the board may award, and requires the application for compensation to be verified under penalty of perjury. Existing law establishes limits on eligibility, including, among others, because of the victim's involvement in the crime, as specified.

This bill would provide that an application for compensation would not be denied on the basis of the applicant's membership or applicant's family member's membership in, association with, or affiliation with, a gang, or on the basis of the applicant's designation or applicant's family member's designation as a suspected gang member, associate, or affiliate in a shared gang database, as defined.

Existing law, the California Street Terrorism Enforcement and Prevention Act (act) and provides specified punishments for certain crimes committed for the benefit of, at the direction of, or in association with, a criminal street gang, as specified. The act authorizes injunctions against specified gang activity, as provided. The act defines a “shared gang database” as having various attributes, including, among others, that the database contains personal, identifying information in which a person may be designated as a suspected gang member, associate, or affiliate, or for which entry of a person in the database reflects a designation of that person as a suspected gang member, associate, or affiliate. Existing law requires a law enforcement agency, before designating a person as a suspected gang member, associate, or affiliate in the database, to provide a written notice to the person’s parent or guardian, if the person is a minor.

This bill would require the notice described above to be provided to an adult before designating a person as a suspected gang member, associate, or affiliate in the database. The bill would require these databases to comply with federal requirements regarding the privacy and accuracy of information in the database, and other operating principles for maintaining these databases. The bill would require local law enforcement, commencing December 1, 2017, and every December 1st thereafter to submit specified data pertaining to the database to the Department of Justice, and would require the Department of Justice, commencing January 1, 2018, and every January 1st thereafter, to submit a report containing that information to the CalGang Executive Board and to the Legislature. The bill would require that a person designated as a suspected gang member, associate, or affiliate in a shared gang database who has not been convicted of a violation of gang-related crimes, as specified, within 3 years of the initial designation be removed from the database.

By imposing additional duties on local law enforcement entities, this bill would impose a state-mandated local program.

The bill would establish a procedure for a person designated in a shared gang database or who is subject to a gang injunction to challenge that designation or injunction through an administrative hearing and appeal to the superior court.

By requiring local law enforcement to implement an appeal process for persons designated in a shared gang database or subject to a gang injunction, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law, the California Street Terrorism Enforcement and Prevention Act (Act), and provides specified punishments for certain crimes committed for the benefit of, at the direction of, or in association with, a criminal street gang, as specified. The act authorizes injunctions against specified gang activity, as provided. The act defines a “shared gang database” as having various attributes, including, among others, that the database contains personal, identifying information in which a person may be designated as a suspected gang member, associate, or affiliate, or for which entry of a person in the database reflects a designation of that person as a suspected gang member, associate, or affiliate. Existing law requires a law enforcement agency, before designating a person as a suspected gang member, associate, or affiliate in the database, to provide a written notice to the person’s parent or guardian, if the person is a minor.~~

~~This bill would express the intent of the Legislature to enact legislation requiring local law enforcement agencies to provide written notice to an adult before making a gang designation and entering the adult’s personal, identifying information into a shared gang database.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 13956 of the Government Code is*
- 2 *amended to read:*
- 3 13956. Notwithstanding Section 13955, a person shall not be
- 4 eligible for compensation under the following conditions:
- 5 (a) An application may be denied, in whole or in part, if the
- 6 board finds that denial is appropriate because of the nature of the
- 7 victim’s or other applicant’s involvement in the events leading to
- 8 the crime, or the involvement of the person whose injury or death
- 9 gives rise to the application.

(1) Factors that may be considered in determining whether the victim or derivative victim was involved in the events leading to the qualifying crime include, but are not limited to:

(A) The victim or derivative victim initiated the qualifying crime, or provoked or aggravated the suspect into initiating the qualifying crime.

(B) The qualifying crime was a reasonably foreseeable consequence of the conduct of the victim or derivative victim.

(C) The victim or derivative victim was committing a crime that could be charged as a felony and reasonably lead to him or her being victimized. However, committing a crime shall not be considered involvement if the victim's injury or death occurred as a direct result of a crime committed in violation of Section 261, 262, or 273.5 of, or for a crime of unlawful sexual intercourse with a minor in violation of subdivision (d) of Section 261.5 of, the Penal Code.

(2) If the victim is determined to have been involved in the events leading to the qualifying crime, factors that may be considered to mitigate or overcome involvement include, but are not limited to:

(A) The victim's injuries were significantly more serious than reasonably could have been expected based on the victim's level of involvement.

(B) A third party interfered in a manner not reasonably foreseeable by the victim or derivative victim.

(C) The board shall consider the victim's age, physical condition, and psychological state, as well as any compelling health and safety concerns, in determining whether the application should be denied pursuant to this section. The application of a derivative victim of domestic violence under 18 years of age or derivative victim of trafficking under 18 years of age shall not be denied on the basis of the denial of the victim's application under this subdivision.

(b) (1) An application shall be denied if the board finds that the victim or, if compensation is sought by, or on behalf of, a derivative victim, either the victim or derivative victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. In determining whether cooperation has been reasonable, the board shall consider the victim's or derivative victim's age, physical

1 condition, and psychological state, cultural or linguistic barriers,
2 any compelling health and safety concerns, including, but not
3 limited to, a reasonable fear of retaliation or harm that would
4 jeopardize the well-being of the victim or the victim's family or
5 the derivative victim or the derivative victim's family, and giving
6 due consideration to the degree of cooperation of which the victim
7 or derivative victim is capable in light of the presence of any of
8 these factors. A victim of domestic violence shall not be determined
9 to have failed to cooperate based on his or her conduct with law
10 enforcement at the scene of the crime. Lack of cooperation shall
11 also not be found solely because a victim of sexual assault,
12 domestic violence, or human trafficking delayed reporting the
13 qualifying crime.

14 (2) An application for a claim based on domestic violence shall
15 not be denied solely because a police report was not made by the
16 victim. The board shall adopt guidelines that allow the board to
17 consider and approve applications for assistance based on domestic
18 violence relying upon evidence other than a police report to
19 establish that a domestic violence crime has occurred. Factors
20 evidencing that a domestic violence crime has occurred may
21 include, but are not limited to, medical records documenting
22 injuries consistent with allegations of domestic violence, mental
23 health records, or that the victim has obtained a permanent
24 restraining order.

25 (3) An application for a claim based on a sexual assault shall
26 not be denied solely because a police report was not made by the
27 victim. The board shall adopt guidelines that allow it to consider
28 and approve applications for assistance based on a sexual assault
29 relying upon evidence other than a police report to establish that
30 a sexual assault crime has occurred. Factors evidencing that a
31 sexual assault crime has occurred may include, but are not limited
32 to, medical records documenting injuries consistent with allegations
33 of sexual assault, mental health records, or that the victim received
34 a sexual assault examination.

35 (4) An application for a claim based on human trafficking as
36 defined in Section 236.1 of the Penal Code shall not be denied
37 solely because no police report was made by the victim. The board
38 shall adopt guidelines that allow the board to consider and approve
39 applications for assistance based on human trafficking relying
40 upon evidence other than a police report to establish that a human

1 trafficking crime as defined in Section 236.1 of the Penal Code
2 has occurred. That evidence may include any reliable corroborating
3 information approved by the board, including, but not limited to,
4 the following:

5 (A) A Law Enforcement Agency ~~Endorsement~~ *endorsement*
6 issued pursuant to Section ~~236.2~~ 236.5 of the Penal Code.

7 (B) A human trafficking caseworker, as identified in Section
8 1038.2 of the Evidence Code, has attested by affidavit that the
9 individual was a victim of human trafficking.

10 (5) (A) An application for a claim by a military personnel victim
11 based on a sexual assault by another military personnel shall not
12 be denied solely because it was not reported to a superior officer
13 or law enforcement at the time of the crime.

14 (B) Factors that the board shall consider for purposes of
15 determining if a claim qualifies for compensation include, but are
16 not limited to, the evidence of the following:

17 (i) Restricted or unrestricted reports to a military victim
18 advocate, sexual assault response coordinator, chaplain, attorney,
19 or other military personnel.

20 (ii) Medical or physical evidence consistent with sexual assault.

21 (iii) A written or oral report from military law enforcement or
22 a civilian law enforcement agency concluding that a sexual assault
23 crime was committed against the victim.

24 (iv) A letter or other written statement from a sexual assault
25 counselor, as defined in Section 1035.2 of the Evidence Code,
26 licensed therapist, or mental health counselor, stating that the
27 victim is seeking services related to the allegation of sexual assault.

28 (v) A credible witness to whom the victim disclosed the details
29 that a sexual assault crime occurred.

30 (vi) A restraining order from a military or civilian court against
31 the perpetrator of the sexual assault.

32 (vii) Other behavior by the victim consistent with sexual assault.

33 (C) For purposes of this subdivision, the sexual assault at issue
34 shall have occurred during military service, including deployment.

35 (D) For purposes of this subdivision, the sexual assault may
36 have been committed off base.

37 (E) For purposes of this subdivision, a “perpetrator” means an
38 individual who is any of the following at the time of the sexual
39 assault:

1 (i) An active duty military personnel from the United States
2 Army, Navy, Marine Corps, Air Force, or Coast Guard.

3 (ii) A civilian employee of any military branch specified in
4 clause (i), military base, or military deployment.

5 (iii) A contractor or agent of a private military or private security
6 company.

7 (iv) A member of the California National Guard.

8 (F) For purposes of this subdivision, “sexual assault” means an
9 offense included in Section 261, 262, 264.1, 286, 288a, or 289 of
10 the Penal Code, as of the date the act that added this paragraph
11 was enacted.

12 (c) (1) Notwithstanding Section 13955, no person who is
13 convicted of a violent felony listed in subdivision (c) of Section
14 667.5 of the Penal Code may be granted compensation until that
15 person has been discharged from probation or has been released
16 from a correctional institution and has been discharged from parole,
17 or has been discharged from postrelease community supervision
18 or mandatory supervision, if any, for that violent crime. In no case
19 shall compensation be granted to an applicant pursuant to this
20 chapter during any period of time the applicant is held in a
21 correctional institution, or while an applicant is required to register
22 as a sex offender pursuant to Section 290 of the Penal Code.

23 (2) A person who has been convicted of a violent felony listed
24 in subdivision (c) of Section 667.5 of the Penal Code may apply
25 for compensation pursuant to this chapter at any time, but the award
26 of that compensation may not be considered until the applicant
27 meets the requirements for compensation set forth in paragraph
28 (1).

29 (d) *The board shall not deny an application for compensation*
30 *on the basis of the applicant’s membership or applicant’s family*
31 *member’s membership in, association with, or affiliation with, a*
32 *gang, or on the basis of the applicant’s designation or applicant’s*
33 *family member’s designation as a suspected gang member,*
34 *associate, or affiliate in a shared gang database as defined in*
35 *Section 186.34 of the Penal Code.*

36 SEC. 2. *Section 186.34 of the Penal Code is amended to read:*

37 186.34. (a) (1) For purposes of this section, “shared gang
38 database” shall mean any database that satisfies all of the following:

39 (A) Allows access for any local law enforcement agency.

1 (B) Contains personal, identifying information in which a person
2 may be designated as a suspected gang member, associate, or
3 affiliate, or for which entry of a person in the database reflects a
4 designation of that person as a suspected gang member, associate,
5 or affiliate.

6 (C) Is subject to Part 23 of Title 28 of the Code of Federal
7 Regulations. If federal funding is no longer available to a database
8 through the federal Omnibus Crime Control and Safe Streets Act
9 of 1968 (42 U.S.C. Sec. 3711 et seq.), a database shall not have
10 to satisfy this subparagraph to meet the definition of a “shared
11 gang database.”

12 (2) A “shared gang database” does not include dispatch operator
13 reports, information used for the administration of jail or custodial
14 facilities, criminal investigative reports, probation reports, or
15 information required to be collected pursuant to Section 186.30.

16 (3) *Notwithstanding subparagraph (C) of paragraph (1), a*
17 *“shared gang database” includes the CalGang system, operated*
18 *pursuant to Part 23 of Title 28 of the Code of Federal Regulations.*

19 *(b) Notwithstanding subparagraph (C) of paragraph (1) of*
20 *subdivision (a), a shared gang database, as defined in this section,*
21 *shall retain records related to the gang activity of the individuals*
22 *in the database consistent with the provisions contained in Section*
23 *23.20(h) of Title 28 of the Code of Federal Regulations.*

24 *(c) (1) Commencing December 1, 2017, and annually on*
25 *December 1 thereafter, any law enforcement agency that elects to*
26 *utilize a shared gang database, as defined in subdivision (a), shall*
27 *submit a report to the Department of Justice that contains, by ZIP*
28 *Code, referring agency, race, gender, and age, the following*
29 *information:*

30 *(A) The number of persons included in the database on the day*
31 *of reporting.*

32 *(B) The number of persons added to the database during the*
33 *immediately preceding 12 months.*

34 *(C) The number of requests for removal of a person from the*
35 *database received during the immediately preceding 12 months.*

36 *(D) The number of requests for removal of a person from the*
37 *database that were granted during the immediately preceding 12*
38 *months.*

39 *(E) The number of persons automatically removed from the*
40 *database during the immediately preceding 12 months.*

1 (2) Commencing January 1, 2018, and annually on December
2 1 thereafter, the Department of Justice shall submit a report to the
3 CalGang Executive Board and to the Legislature that contains the
4 information collected pursuant to paragraph (1).

5 (3) A report submitted to the Legislature pursuant to subdivision
6 (a) shall comply with Section 9795 of the Government Code.

7 ~~(b)~~

8 (d) (1) To the extent a local law enforcement agency elects to
9 utilize a shared gang database, as defined in subdivision (a), prior
10 to a local law enforcement agency designating a person as a
11 suspected gang member, associate, or affiliate in a shared gang
12 database, or submitting a document to the Attorney General's
13 office for the purpose of designating a person in a shared gang
14 database, or otherwise identifying the person in a shared gang
15 database, the local law enforcement agency shall provide written
16 notice to the person, and shall, if the person is under 18 years of
17 age, provide written notice to the person and his or her parent or
18 ~~guardian~~ guardian, of the designation and the basis for the
19 designation, unless providing that notification would compromise
20 an active criminal investigation or compromise the health or safety
21 of the minor.

22 (2) The notice described in paragraph (1) shall describe the
23 process for the person, or if the person is under 18 years of age,
24 for his or her parent or guardian, or an attorney working on behalf
25 of the person, to contest the designation of the person in the
26 database. The notice shall also inform the person of the reason
27 for his or her designation in the database.

28 (e) (1) (A) A person, or, if the person is under 18 years of age,
29 his or her parent or guardian, or an attorney working on behalf
30 of the person may request information of any law enforcement
31 agency as to whether the person is designated as a suspected gang
32 member, associate, or affiliate in a shared gang database
33 accessible by that law enforcement agency and what law
34 enforcement agency made the designation. A request pursuant to
35 this paragraph shall be in writing.

36 (B) If a person about whom information is requested pursuant
37 to subparagraph (A) is designated as a suspected gang member,
38 associate, or affiliate in a shared gang database by that law
39 enforcement agency, the person making the request may also
40 request information as to the reason for the designation for the

1 *purpose of contesting the designation as described in subdivision*
2 *(f).*

3 *(2) The law enforcement agency shall provide information*
4 *requested under paragraph (1), unless doing so would compromise*
5 *an active criminal investigation or compromise the health or safety*
6 *of the person if the person is under 18 years of age.*

7 *(3) The law enforcement agency shall respond to a valid request*
8 *pursuant to paragraph (1) in writing to the person making the*
9 *request within 30 calendar days of receipt of the request.*

10 ~~(e)~~

11 *(f) Subsequent to the notice described in ~~subdivision (b)~~,*
12 *subdivision (d), the person to be designated as a suspected gang*
13 *member, associate, or affiliate, or his or her parent or guardian,*
14 *may submit written documentation to the local law enforcement*
15 *agency contesting the designation. The local law enforcement*
16 *agency shall review the documentation, and if the agency*
17 *determines that the person is not a suspected gang member,*
18 *associate, or affiliate, the agency shall remove the person from the*
19 *shared gang database. The local law enforcement agency shall*
20 *provide the person and his or her parent or guardian with written*
21 *verification of the agency's decision within ~~60~~ 30 days of*
22 *submission of the written documentation contesting the designation.*
23 *If the law enforcement agency denies the request for removal, the*
24 *notice of its determination shall state the reason for the denial.*
25 *The person may appeal the denial pursuant to Section 186.35.*

26 ~~(d) The person to be designated as a suspected gang member,~~
27 ~~associate, or affiliate, or his or her parent or guardian, shall be able~~
28 ~~to request information as to whether the person has been designated~~
29 ~~as a suspected gang member, associate, or affiliate, and the local~~
30 ~~law enforcement agency shall provide that information, unless~~
31 ~~doing so would compromise an active criminal investigation or~~
32 ~~compromise the health or safety of the minor.~~

33 ~~(e) The local law enforcement agency shall not disclose the~~
34 ~~location of the~~

35 ~~(g) A person to be designated as a suspected gang member,~~
36 ~~associate, or affiliate to his or her parent or guardian if in a shared~~
37 ~~gang database who has not been convicted of a violation of Section~~
38 ~~186.22 within three years of the agency determines there is credible~~
39 ~~evidence that initial designation shall be removed from the~~

1 ~~information would endanger the health or safety of the minor.~~
2 ~~database.~~

3 ~~(f) A shared gang database, as defined in this section, shall retain~~
4 ~~records related to the gang activity of the individuals in the~~
5 ~~database consistent with the provisions contained in Section~~
6 ~~23.20(h) of Title 28 of the Code of Federal Regulations.~~

7 ~~(g)~~

8 ~~(h) Nothing in this section shall require a local law enforcement~~
9 ~~agency to disclose any information protected under Section 1040~~
10 ~~or 1041 of the Evidence Code or Section 6254 of the Government~~
11 ~~Code.~~

12 *SEC. 3. Section 186.35 is added to the Penal Code, to read:*

13 *186.35. (a) A person who is listed by a law enforcement agency*
14 *in a shared gang database or is subject to a gang injunction as a*
15 *gang member, suspected gang member, associate, or affiliate may*
16 *contest that designation or being subject to the gang injunction*
17 *pursuant to this section. The person may contest the designation*
18 *initially pursuant to this section, or other a denial as specified in*
19 *subdivision (f) of Section 186.34.*

20 *(b) The person may request an administrative hearing to review*
21 *the designation decision or applicability of the injunction. A person*
22 *may challenge both a designation and gang injunction in one*
23 *proceeding.*

24 *(c) An administrative hearing shall be held within 90 calendar*
25 *days following the receipt of a request for an administrative*
26 *hearing. The person requesting the hearing may request one*
27 *continuance, not to exceed 21 calendar days.*

28 *(d) The administrative hearing shall be conducted in accordance*
29 *with written procedures established by the agency. The hearing*
30 *shall provide an independent, objective, fair, and impartial review*
31 *of a contested designation.*

32 *(e) The agency shall appoint or contract with qualified*
33 *examiners or administrative hearing providers that employ*
34 *qualified examiners to conduct the administrative hearings.*
35 *Examiners shall demonstrate those qualifications, training, and*
36 *objectivity necessary to conduct a fair and impartial review.*

37 *(f) The examiner's decision following the administrative hearing*
38 *may be personally delivered to the person by the examiner or sent*
39 *by first-class mail, and, if the designation is not canceled, shall*
40 *include a written reason for that denial.*

1 (g) Within 30 calendar days after the mailing or personal
2 delivery of the examiner's decision, the person may seek review
3 by filing an appeal to be heard by the superior court where the
4 appeal shall be heard de novo. A copy of the notice of appeal shall
5 be served in person or by first-class mail upon the agency by the
6 person. For purposes of computing the 30-calendar-day period,
7 Section 1013 of the Code of Civil Procedure shall be applicable.

8 (h) The fee for filing the notice of appeal is as provided in
9 Section 70615 of the Government Code. The court shall notify the
10 person of the appearance date by mail or personal delivery. The
11 court shall retain the fee under Section 70615 of the Government
12 Code regardless of the outcome of the appeal. If the court finds in
13 favor of the person, the amount of the fee shall be reimbursed to
14 the person by the agency.

15 (i) The law enforcement agency has the burden of demonstrating
16 active gang membership, associate status, or affiliate status to the
17 court by clear and convincing evidence.

18 (j) A successful challenge to the designation shall result in the
19 removal of the person from the shared gang database or the
20 contestant not being subject to the injunction, or both.

21 SEC. 4. If the Commission on State Mandates determines that
22 this act contains costs mandated by the state, reimbursement to
23 local agencies and school districts for those costs shall be made
24 pursuant to Part 7 (commencing with Section 17500) of Division
25 4 of Title 2 of the Government Code.

26 ~~SECTION 1. It is the intent of the Legislature to enact~~
27 ~~legislation requiring local law enforcement agencies to provide~~
28 ~~written notice to an adult before making a gang designation and~~
29 ~~entering the adult's personal, identifying information into a shared~~
30 ~~gang database.~~